IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 262 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

SUMANLAL VRAJLAL

Appearance:

1. Criminal Appeal No. 262 of 1992

Mr.I.M.Pandya, learned A.P.P. for Appellant No.

MR YS MANKAD for Respondent No. 1-4

MR BY MANKAD for Respondent No. 1-4

CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 26/08/2004

ORAL JUDGEMENT

#. This appeal is preferred by the State under Section 378 of the Criminal Procedure Code, 1973 against the judgment and order of acquittal dated 30.11.1991 passed by the learned Judicial Magistrate, First Class,

Ahmedabad (Rural) at Dehgam in Criminal Case No.277 of 1987.

#. The short facts of the case are that the complainant-Manilal H Patel, went to the shop where accused no.2 was present along with two panchas i.e. Rasulbhai Abdulbhai Shaikh and Chinubhai Prabhuram Rami and gave his identification as Food Inspector. After that, he purchased oil of Mohini brand costing Rs.6.40ps. and after completing the procedure sent the same for analysis. On receiving the report, it was found to be adulterated. Therefore, after obtaining sanction, complaint under Sections 7 and 16(A)(1) of the Prevention of Food Adulteration Act to that effect was filed in the Court of Learned J.M.F.C., Ahmedabad (Rural) against the accused.

#. Thereafter, the respondents gave application exh.11 in the aforesaid criminal case along with application exh.47 contending that the public analyst, who analysed the sample, was not legally authorised to analyse the said sample. Therefore, the report of the said public analyst, Shri P.M.Patel, is not legal. The learned trial Court, after considering all the aspects, allowed both these applications and discharged the accused. It is against this order, this appeal is preferred.

#. Mr.Pandya, learned A.P.P. for the State submitted that the learned Judge has not given reasons in coming to the conclusion that the sanction given by the Local Health officer under Section 20 is not legal. It is also argued that the learned Judge has erred in observing that the public analyst was not authorised to analyse the sample and that also erred in saying that in the complaint there is no mention of public interest at all. He, therefore, prayed for allowing this appeal by setting aside the order of the learned trial Judge. Mr.Mankad learned advocate for the respondent has taken me through the judgment and papers and submitted that the learned Judge has rightly discharged the accused as the primary procedure followed was not according to law. It is submitted that, however, a period of more than 13 years have passed and it would not be in the interest of justice to interfere with the judgment of acquittal after such a long time and therefore he prayed for the dismissal of the appeal.

#. I have gone through the judgment and papers produced on record. The learned Judge has taken into consideration the Gujarat Government Notification No.GY/28/DLB/1082/2619(83)H dated 06.09.1985 by which all

the earlier notifications were cancelled and also took into consideration the decision of the Apex Court in case of A.K.Roy V/s State of Punjab reported in AIR 1986 SC Page 2160 and came to the conclusion that Mr.Patel had no authority to give report and therefore acquitted the accused. I am also of the opinion that Mr.Patel has filed the complaint against the accused as if he has personal interest in it. Therefore, no interference is required with the judgment of the learned trial Court.

#. In view of the aforesaid circumstances, this appeal deserves to be dismissed and is dismissed accordingly.

(SHARAD D DAVE, J)

srilatha